

Form and Correctness Approved: *BAP*

Contents Approved:



By: _____
Office of the City Attorney



By: _____
DEPT. Development

NORFOLK, VIRGINIA

Ordinance No. 48612

AN ORDINANCE APPROVING THE SUBLEASE TO THE PORTSMOUTH HUMANE SOCIETY ("PHS"), UPON CERTAIN CONDITIONS, OF A PORTION OF CERTAIN PROPERTY LOCATED AT 5585 SABRE ROAD, LEASED BY THE CITY OF NORFOLK FOR ITS ANIMAL CARE CENTER, AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A SUBLEASE AGREEMENT ON BEHALF OF THE CITY.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That a sublease agreement between the City of Norfolk as lessee and PHS as sublessee for a portion of the Animal Care Center located at 5585 Sabre Road, is hereby approved.

Section 2:- That the City Manager is authorized to negotiate and execute a Sublease Agreement with PHS, substantially in the same form and terms as in the agreement attached as Exhibit A, satisfactory to the City Attorney, and consistent with this ordinance.

Section 3:- That this ordinance shall be in effect from and after the date of its adoption.

ATTACHMENTS:

Exhibit A (12 pages)

Adopted by Council January 11, 2022

Effective January 11, 2022

TRUE COPY

TESTE:

RICHARD ALLAN BULL

BY:

CHIEF DEPUTY CITY CLERK

EXHIBIT A**SUBLEASE AGREEMENT**

This Sublease Agreement ("Sublease"), made and entered into this day of 2022, by and between the CITY OF NORFOLK, Virginia, a municipal corporation of the Commonwealth of Virginia (herein "City") and PORTSMOUTH HUMANE SOCIETY, INC., a Virginia non-stock corporation (herein "PHS"), and ANGELJO, INC., a Virginia corporation, (herein "Landlord"),

WITNESSETH:

WHEREAS, the City leases property from Landlord at 5585 Sabre Road for the Norfolk Animal Care Center ("NACC") by Lease Agreement ("Lease Agreement"), a copy of which is attached hereto as **Exhibit A** and incorporated by reference; and

WHEREAS, the City has exercised its option to renew the Lease Agreement; and

WHEREAS, the City wishes to sublease a portion of the property to the Portsmouth Humane Society; and

WHEREAS, the Landlord is consenting to the Sublease by being a party to the Sublease; now, therefore, the parties agree as follows:

1. **PREMISES.** The City hereby Subleases and demises to PHS and PHS takes and Subleases from the City a portion of the property (hereinafter "Demised Premises") owned by Landlord which is known, numbered and designated as 5585 Sabre Road, Norfolk, Virginia, 23502, and which said portion measures 1,350 square feet (hereinafter "Subleased Premises"), as shown on **Exhibit A** hereto attached and incorporated by reference. PHS shall have access to the Subleased Premises during operating hours of the NACC and shall also have use of the NACC parking lot. PHS employees will not park in reserved customer parking spaces.

This Sublease is subject to and subordinate to all the terms and conditions of the Lease Agreement to the extent not inconsistent with the provisions of this Sublease. As pertains to the Subleased Premises, the provisions of the Lease Agreement are incorporated herein by reference with the same force and effect as if they were fully set forth herein, but specifically excluding Paragraphs or Sections pertaining to rents, options to extend the Lease Agreement and maintenance obligations of the Tenant.

2. **TERM.** The initial term of this Sublease shall commence on January 1, 2022, or the effective date of the ordinance approving this Sublease Agreement, whichever occurs last, and shall end automatically on the date on which the term of the Veterinary Services Agreement between the City and PHS expires or is terminated, unless the City's Lease Agreement is earlier terminated, in which case this Sublease will also be terminated. The City shall provide PHS with a copy of any notice given by the City to the Landlord extending the term of the Lease Agreement at least thirty (30) days prior to the end of any term under the Lease Agreement and shall provide PHS with notice terminating the Lease Agreement upon receipt of such notice. Except where the context clearly requires otherwise, the word "term" whenever used in this

Sublease with reference to the duration hereof, shall be construed to include any renewal term as well as the original term.

3. PURPOSE; NUISANCE. The Subleased Premises shall be used as a veterinary clinic operated by PHS. PHS covenants not to allow the Subleased Premises to be used for an illegal or immoral purpose and agrees not to do (or suffer to be done) in or about the Subleased Premises any act or thing which may be a nuisance, annoyance inconvenience or damage to Landlord, the Demised Premises, the City, the occupants of adjoining property or the neighborhood.

4. RENT. On the first day of each month, PHS shall pay the City monthly rent in the amount of Nine Hundred Fifteen Dollars and Seventy-Five Cents (\$915.75). Rent shall be paid by check made payable to the "Treasurer, City of Norfolk" and delivered to **Economic Development, 999 Waterside Drive, Suite 2430, Norfolk, VA 23510**, or to such other payee or at such other address as may be designated by notice in writing from City to PHS. Rent shall be paid, without prior demand therefore in advance on the first day of each month of the Term, beginning January 1, 2022. Rent shall be pro-rated for partial months at the beginning and end of the Term.

5. ASSIGNMENT. PHS covenants not to assign this Sublease nor sublet the Subleased Premises or any part thereof, nor permit any other person to occupy same. If any person or legal entity other than PHS is in possession of the Subleased Premises, during the term hereof without the consent of Landlord or City, Landlord and/or the City shall have the option to terminate this Sublease without prior notice.

6. REMEDIES UPON DEFAULT. PHS covenants that if the Subleased Premises are deserted, abandoned or closed, for a period of thirty (30) days or if PHS defaults for a period of ten (10) days in paying any installments of rent or other sum when due hereunder or defaults for a period of ten (10) days following written notice thereof in performing any covenant, provision or condition binding upon PHS, contained in this Sublease Agreement or in the Veterinary Services Agreement, City shall have the right to enter and take possession of the Subleased Premises without notice to PHS, peaceably or by force, to exercise self-help and to terminate PHS's right to occupancy, in addition to all other rights and remedies provided by law; but unless City so elects in writing, such re-entry shall not terminate this Sublease.

7. CITY'S EQUIPMENT. The City has outfitted the Subleased Premises with veterinary equipment which shall remain the property of the City; the inventory list for the equipment is attached as **Exhibit B**. It shall be the responsibility and a cost of the City to provide maintenance and repair to City-owned pieces of equipment. PHS employees are expected to use the equipment with care. PHS shall notify the City of any damage or malfunction to any piece of City-owned equipment. It is expected that the items in the inventory list will be accounted upon expiration or termination of the sublease.

8. PHS'S FURNITURE AND FIXTURES. The City and PHS agree that all furniture, fixtures and equipment which may be placed in the Subleased Premises by PHS are owned by PHS and shall be removed by PHS upon the expiration or termination of this Sublease. The parties further agree that any damages caused by removal of any furniture or fixtures by PHS

shall be repaired by PHS to the satisfaction of the City Manager or his designee within thirty (30) days of the expiration or termination of this Sublease or PHS agrees to be liable for the costs incurred by the City in making such repairs.

9. UTILITIES. The City will furnish usual and reasonable electricity for lighting and for the operation of PHS's equipment, water and sewerage, gas and other utilities, and during normal business hours (which shall be from 6:00 a.m. to 6:00 p.m. Monday through Sunday) heating and air-conditioning, all as may be necessary for the reasonable use of the Subleased Premises by PHS for the permitted uses. The City covenants to pay promptly for all gas, water, electricity, sewage disposal, storm water management services and/or fees and other utilities used or consumed at the Demised Premises during the term of this Sublease.

10. MAINTENANCE AND REPAIRS.

(a) During the term of this Sublease, at PHS's sole cost and expense, PHS covenants with respect to the Subleased Premises; (i) keep in good order and repair the pipes, conduits, wires and other appurtenances of the Subleased Premises, including all water, electrical, gas and waste pipes and fixtures appurtenant thereto; (ii) to alert the City of any damage to pipes, toilets, doors, locks, hardware or fixture, which the City will repair at its own cost and expense.. PHS further agrees not to place (or suffer to be placed) any debris on the roof of the building in which the Subleased Premises are located and not to cut into or drive nails into or otherwise mutilate said roof; PHS understands and agrees that Landlord is not responsible for painting any portion (inside or outside) of the Subleased Premises.

(b) The City covenants that during the term of this Sublease it will faithfully observe and perform all of the maintenance and repair obligations of the Tenant under the Lease Agreement except for those specific obligations of PHS in Section 10(a) above and except as any maintenance and repair may be needed if required by the actions of PHS.

11. INSECTS AND RODENTS. PHS covenants to do the things reasonably necessary, or required by law, to keep the Subleased Premises free of roaches, rodents, insects and other pests and PHS agree that Landlord shall not be liable for any damage caused thereby.

12. SIGNS. PHS covenants not to paint or place (nor permit to be painted or placed) any sign or other advertising device, banner or billboard upon or about the Subleased Premises (or the exterior of any building in which the Subleased Premises are located) or any part hereof, without prior written permission of Landlord, which permission shall be subject to withdrawal by Landlord at any time for any reason whatsoever.

13. ALTERATIONS/IMPROVEMENTS. PHS covenants not to paint the Subleased Premises or any part thereof, nor to make (or suffer to be made) any waste thereof or alterations or improvements therein or thereto, without prior written permission of Landlord, which permission shall not be unreasonably withheld. The parties agree that any and all work by PHS shall comply with all applicable codes and regulations and shall be submitted by PHS to the City for submission by the City to the Landlord, as deemed necessary by the City, to obtain prior written approval by Landlord of any alterations or improvements by PHS, Should

Landlord grant consent to any of the foregoing, Landlord may impose conditions to ensure such work is performed in a first-class workmanlike and lien free manner, including approval of any contractors and imposing requirements for the release of mechanic's liens, PHS agrees that all additions, improvements and attached equipment installed in or on the Subleased Premises by PHS, including but not limited to electric wiring, awnings, awning frames, floor covering (except carpet and rugs), furnaces and air conditioning machinery and equipment, shall immediately become the property of Landlord and shall not be removed by PHS at the termination of this Sublease, unless requested so to do by Landlord, in which event PHS agrees to do so and to repair promptly any damage caused by such removal. PHS expressly should be able to remove all of its trade fixtures.

13. COMPLIANCE; INDEMNIFICATION. PHS will, at PHS's sole expense, promptly comply with and observe all laws, ordinances, rules, regulations and requirements (including zoning) of the federal, state and municipal governments, relating to the Subleased Premises (including any special equipment) and/or the business conducted therein. PHS covenants to save Landlord and the City harmless from and against any and all liability for injury or damage to person and property caused by the breach of any covenant or agreement of PHS contained in this Sublease. PHS recognizes that the City does not make any representation, express or implied, that the Demised Premises are zoned for the use(s) contemplated by PHS and expressed in paragraph 3 of this Sublease.

14. SPECIAL EQUIPMENT. Unless otherwise provided in an Addendum to this Sublease, to the extent the Subleased Premises include a fire sprinkler or protection system, air compressor, security system, crane, elevator, heating and air-conditioning, electrical charging equipment or other special equipment, City shall be solely responsible for the safe and proper operation thereof and periodic maintenance and repair and servicing of all such equipment, including all necessary testing and monitoring and to maintain or keep appropriate records related thereto as required by applicable law or the insures of the Demised Premises.

15. CONDITION. Upon the termination of this Sublease, PHS covenants to deliver to the City the Subleased Premises and all appurtenances thereto, peaceably and quietly, in as good operating condition as the same now are or may hereafter be put by Landlord, City or PHS, ordinary wear and tear and damage from fire or other casualty not occasioned by the fault, negligence or willful misconduct of PHS, PHS's agents, employees and independent contractors excepted.

16. DAMAGE BY FIRE. It is agreed that if the Demised Premises or the building or buildings of which the Demised Premises are a part, or any part thereof, or any improvement now or hereafter constructed thereon or added thereto shall be damaged by fire or other casualty so as to render the Subleased Premises or any material portion thereof untenable in the opinion of Landlord and the City, Landlord and the City shall each have the right, at any time within thirty (30) days after said fire, to cancel and terminate this Sublease by giving written notice of its intention to do so to the other party, within said thirty (30) day period. If the PHS's use of the Subleased Premises is terminated or substantially impaired because of damage by fire or other casualty to the Demised Premises or any material portion thereof and such termination or substantial impairment of use continues for a period of thirty (30) days,

PHS shall have the right to cancel and terminate this sublease by giving written notice of its intention to do so to the City. If the sublease is so terminated, rent shall abate from the time of such casualty. If the Sublease is not so terminated, the Demised Premises shall be restored with reasonable dispatch at the expense of Landlord but only to the extent of available insurance proceeds (or proceeds from PHS) and the rent due hereunder shall be proportionately abated, according to the loss of use, until the Demised Premises are substantially restored.

17. CONDEMNATION. If all, or any portion of the Demised Premises shall be taken under the exercise of the power of eminent domain or sold to the holder of such power pursuant to a threatened taking and such taking renders the Subleased Premises unusable for the purpose for which they were previously occupied by PHS, then this Sublease shall terminate upon such taking or when such sale is completed, otherwise the Sublease shall remain in effect for the remaining term as to the portion not so taken. PHS shall not be entitled to any part of the condemnation award or purchase price and PHS expressly waives any and all rights thereto. Notwithstanding the foregoing, the PHS shall have the right to seek and recover an award for relocation and moving expenses and for any fixtures of PHS taken by such condemnation.

18. INDEMNITY BY PHS. PHS agrees to hold Landlord and the City harmless from and against any and all injury or death to persons or damage to property in, on or about the Demised Premises, including, without limitation, all costs, expenses, medical costs, attorneys' fees, claims or suits arising in connection therewith except to the extent that any such injury or damage shall be caused by Landlord, City or their agents.

19. INSURANCE. PHS, at its own cost and expense, shall obtain and maintain Comprehensive General Liability Insurance on the Premises for the joint and separate benefit of Landlord, City and PHS in an amount not less than \$1,000,000 for injury to or death of any person or persons, \$2,000,000 for any one occurrence, and \$500,000 for property damage, or in such higher limits as shall be reasonably required by the City.

PHS will be responsible for any and all damages to PHS's inventory, furniture, fixtures and equipment, and will, at all times during the Term and at its own cost expense, maintain all risk property insurance against damage by fire or other perils in an amount equal to the replacement value of all parts of the Subleased Premises for which PHS is responsible. Each insurance policy shall be so written as to protect Landlord and City, as their respective interests may appear, and all liability policies shall specifically name the City of Norfolk and its employees as an Additional Insured and Loss Payee, respectively, under the policy. If PHS fails to provide such insurance, the City may terminate this Lease with ten (10) days notice to PHS. Certificates of Insurance verifying all required insurance policies shall be delivered to the City prior to PHS's occupancy or build-out of the leased space.

PHS agrees to look solely to the proceeds of its own insurer for indemnity against exposure for casualty losses of property or business interruption. PHS warrants that its liability, property and business interruption insurers shall have no rights against Landlord or the City by virtue of assignment loan agreement or otherwise.

20. NO SUBROGATION. All fire, extended coverage, and liability insurance policies and any other policies relating to other casualties or losses, carried by and party to this Sublease covering the Subleased Premises and/or the contents thereof and/or the building containing the Subleased Premises shall expressly waive any right on the part of the insurer against any other party to this Sublease, which right to the extent not prohibited or violate of any such policy, is hereby expressly waived. The parties to this Sublease agree that their policies will include such waiver clause or endorsement so therefore, so long as the party or parties in whose favor such waiver clause or endorsement runs pays such extra cost. If extra cost shall be chargeable therefore, each party shall advise the other of the amount of the extra cost and the other party, as its election, may pay the same but shall not be obligated to do so.

21. NO WAIVERS. PHS and the City agree that any failure of either party to insist upon strict observance of any covenant, provision or condition of this Sublease in any one or more instances shall not constitute or be deemed a waiver, at that time therefore, of such or any other covenant, provision or condition of this Sublease.

21. ENTRY BY LANDLORD. PHS agrees that Landlord and the City may, from time to time during normal business hours, enter the Demised Premises to view or show the same to maintenance personnel, prospective buyers or tenant, lenders or appraisers.

22. ENVIRONMENTAL.

a. PHS covenants, represents and warrants to Landlord and City the following covenants, which covenants, representations and warranties shall be effective as for the first day of this Sublease, shall survive the termination of this Sublease and are material and are being relied upon in making the Sublease:

i) That PHS will comply with all applicable federal, state, and local environmental laws, regulations, ordinances, rules and orders concerning or relating to the use, generation, storage, handling, release, threatened release or disposal of any regulated material or substance PHS uses, treats, stores or handles during PHS's Sublease term.

ii) That PHS shall immediately notify Landlord of PHS's receipt of any report, citation, notice or other writing (and deliver a copy thereof to Landlord on the written request of the Landlord) by, to, or from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities.

iii) That PHS acknowledges that in the event any Hazardous Material used or stored by PHS is required to be removed from the Subleased Premises, the EPA identifying number or the other governmental number assigned to the Hazardous Material so removed and disposed of shall not be identified in the name of Landlord.

- b. PHS shall at PHS's sole cost and expense, protect, defend, save and hold harmless Landlord and City from and against any and all claims, demands, losses, expenses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, without limitation, attorneys' fees, remediation and clean-up costs, transportation, storage and disposal or landfill costs, diminution in the residual value of the Demised Premises, damages arising from any adverse impact on marketing of space, costs incurred in connection with any investigation of work, required by any federal, state or local governmental agency or political subdivision) because of Hazardous Materials used or stored by PHS at the Subleased Premises.

23. FOR RENT AND FOR SALE SIGNS. It is agreed that Landlord shall have The right to put and maintain "FOR RENT" and "FOR SALE" signs in the display windows and on other portions of the Demised Premises, in conspicuous places, during the last three (3) months of the term.

24. NOTICE. Any notice to be given to City as herein provided shall be deemed to be given when duly posted in U.S. Registered or certified mail (return receipt requested), or when delivered to a nationally recognized courier service, addressed to Director, Department of Development, 999 Waterside Drive, Suite 2430, Norfolk, Virginia 23510; and any notice to be given, to PHS as herein provided shall be deemed to be given delivered to a nationally recognized courier service, addressed to PHS at 4022 Seaboard Court, Portsmouth, VA 23701. Either City or PHS may change the place designated for the giving of such notice by written notice duly and timely given to the other.

25. LIMITATION OF LANDLORD'S AND CITY'S LIABILITY. It is agreed that neither Landlord nor City shall be liable or responsible in any way for any injury or death to persons or damage to property sustained in or about the Subleased Premises during the term of this Sublease, unless due to Landlord's or City's own willful or negligent acts.

26. HOLDOVER. If PHS shall be in possession of the Subleased Premises after the term or any renewal term, and in the absence of any right to remain in possession under this Sublease and any written agreement extending the term hereof, the tenancy of this Sublease shall become one from month to month at the highest rental rate then in effect hereunder, to be terminated by either PHS or City on thirty (30) days written notice to the other party.

27. QUIET ENJOYMENT. The City covenants that it has the right to enter into this Sublease and that if PHS shall timely pay all rent and perform all of PHS's covenants, terms, conditions and agreements in this Sublease, PHS shall be entitled to peaceably and quietly occupy and enjoy possession of the Subleased Premises without molestation or hindrance by the City, the Landlord or any party claiming through or under the City or the Landlord.

28. LANDLORD'S JOINDER; THIRD PARTY BENEFICIARY. The Landlord is made a party to this Sublease for the sole purpose of consenting to this Sublease as required by paragraph 5 of the Lease Agreement, and acknowledging that the Landlord is merely a third party beneficiary to certain provisions contained herein. Anything contained in this Sublease to the contrary notwithstanding, this Sublease shall not, by Landlord's joinder as a party, create any privity of estate or privity of contract with PHS or result in a partial assignment of the Lease Agreement with the City. Landlord's obligations are only those owing to the City under the Lease Agreement, and this Sublease shall not impair or diminish any of the City's obligations to Landlord under the Lease Agreement.

[Signature Page to Sublease Agreement]

IN WITNESS WHEREOF, each party hereto has executed this Sublease in his or her name or has caused this Lease to be executed in its name and behalf by its proper officer, partner, manager or fiduciary, and in a manner authorized by the applicable governing documents of said corporation, partnership, limited liability company, trust or other legal entity.

CITY OF NORFOLK

Dr. Larry H. Filer II, City Manager

Attest:

City Clerk

Date _____

PORTSMOUTH HUMANE SOCIETY, INC.

Alison Fechino, Executive Director

ANGELJO, INC.

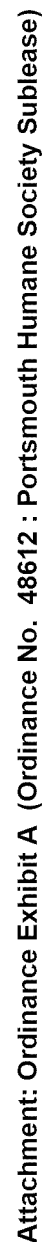
Richard H. Green, President

Approved as to content:

Director of Development

Approved as to form and correctness:

Deputy City Attorney



Inventory List
City of Norfolk Animal Care Center

Date:		11/21/2021		Description	
Account #		8300880-500			
order	Product #	MFG			
ENW8362	070465	MIDMARK CORP	AUTOClave M11 STEAM STERILIZER EA		
ENW8362	035133	MIDMARK CORP	SCALE TABLE TOP LCD SMAN VSSI		
ENW8362	070463	MIDMARK CORP	VETPRO 1000 LED PIEZO F/O SWIVEL HP		
ESR6016	005274	WELCH ALLYN INC	WAL DIAG SET HALO COMP W/CASE WAL EA		
ESR6016	022962	JORGENSEN	CABINET NARCOTICS SM J367S JOR EA		
ESR6016	071954	BIONET AMERICA INC	BM3VET PRO		
ESR6016	041856	BIONET AMERICA INC	MONITOR BNET CO2 CAPNOSTAT 5 MNSTR		
ESR6016	066388	BIONET AMERICA INC	BM SERIES ROLL CART		
ENW8556	071894	MIDMARK CORP	EXAM STOOL 273 W BACK ADJ OBSIDIAN		
ENW8362	070464	MIDMARK CORP	TBL FOLDING EXAM GAS ASSIST EA		
ESR6016	068686	JORGENSEN	CENTRIFUGE USA E8 COMBO VARI CRT CAR		
ESR6016	004287	BLICKMAN INC	IV STAND 2 HOOK W/CAST JBC EA		
ESR6016	033885	JORGENSEN	MICROSCOPE BI INFNTY LABSCOPE J0334Q		
ENW8556	071897	MIDMARK CORP	SIDE CHAIR 280 W/O ARMS OBSIDIAN		
ENW8362	065867	MIDMARK CORP	LIGHT LED 120 SNGL CEILING MOUNT		
ENW8804	007613	MIDMARK CORP	SINGLE LEVER FAUCET W/ 84" SPRAYER		
ENW8556	071918	MIDMARK CORP	TABLE WET SS CAB 5" LFT 60"		
ESR6016	072289	MASIMO CORPORATION	MONITOR PULSE OX RAD-57 W/ PVI HNDHLD		
ESR6016	032032	HESKA CORPORATION	PUMP IV VET FOR HOSPIRA SETS HESKA		
ENW8362	070455	MIDMARK CORP	ANES CENTRAL SCAVENGER MTR		
ENW8362	033482	MIDMARK CORP	SURG TBL FLAT 60" HYDR NOHEAT VSSI		
ENW8362	055488	MIDMARK CORP	LIGHT MIDMARK 255 LED DUAL CEIL 9FT		
ESR6016	069365	BLICKMAN INC	INSTR STAND MAYO 5-LEG CHROME		
	060996	MIDMARK CORP	QUICKCLEAN ULTRASONIC CLEANER MID		
ESR6016	057886	SUPERA	ANES MACH PURELINE M6000 SAFETY POP		
ESR6016	067795	SUPERA	ANES VAP SEVOFLURANE TEC 3 EA		
ESR6016	067512	SUPERA	ANES VAP TEC3 ISO F-FILL		
ESR6016	067517	SUPERA	OXYGEN PURELINE M6000 DUAL VAP KIT		
ENW8362	007695	MIDMARK CORP	SCALE PLATFORM VSSI		
ERG1839	067617	SEDECAL USA	XRAY DIGITAL DX-V 17 TK SYSTEM		
ENW6579	033587	MIDMARK CORP	MIDMARK CASEWORK		
ERB3447	033587	MIDMARK CORP	CAGE BANKS		